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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/662,935

Applicant(s)

LAGASSE, ROLAND

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 121903
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) **mentioned** in the description: **42** (note line 9 on page 5). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) **not mentioned** in the description: **X** (note Fig. 3 in the upper right hand corner). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because, in Fig. 3, "28" in the upper right hand corner should be deleted since the pivot connection 28 is shown in the lower left hand corner of the figure. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to

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the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

### *Specification*

5. The following informalities in the specification are noted: (A) in ¶s 16 and 19 on pages 4 and 5, the description of "25" is inconsistent; (B) in ¶ 16 on page 4, the description of "34" is inconsistent; (C) in ¶ 16 on page 4, the description of "38" is inconsistent; (D) on page 5, line 20, "connection" should be changed to read --passage--; and (E) in ¶s 16 and 20 on pages 4 and 6, the description of "36" is inconsistent. Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-12 and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 1 and 9 contain terms lacking proper antecedent basis. The claims recite the limitations "the other" in line 7, and "said hollow cylindrical portion" in lines 9 and 10-11. There is insufficient antecedent basis for these limitations in the claims.

9. Claim 4 contains a term lacking proper antecedent basis. The claim recites the limitation "said hollow cylindrical portion" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

10. Claims 7, 11 and 15 contain a term lacking proper antecedent basis. The claims recite the limitation "said hollow cylindrical portion" in lines 2-3. There is insufficient antecedent basis for this limitation in the claims.

11. Claim 7 is indefinite since it is unclear as to how the boss recited on line 1 structurally relates to the boss recited on lines 1-2 in claim 6.

12. Claim 9 is indefinite since it is unclear as to which cup is being referred to on line 18 since there are two different cups, one recited on line 6 and another recited on line 14.

13. Claim 10 is indefinite since it is unclear as to which end wall, cup and threaded member is being referred to on line 2 since claim 9 recites two different end walls, two different cups and two different threaded members.

14. Claim 11 is indefinite since it is unclear as to which cup is being referred to on line 1 since claim 9 recites two different cups.

15. Claim 12 is indefinite since it is unclear as to which threaded member is being referred to on line 1 since claim 9 recites two different threaded members.

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16. Claim 12 is indefinite since it is unclear as to which cup is being referred to on line 3 since claim 9 recites two different cups.

17. Claim 14 contains a term lacking proper antecedent basis. The claim recites the limitation "said hollow cylindrical member" in lines 2-4. There is insufficient antecedent basis for this limitation in the claim.

18. Claim 16 contain terms lacking proper antecedent basis. The claim recites the limitations "the flow passage" in line 2, and "said first link" in line 3. There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

20. Claims 1, 2, 4, 6, 7 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyerhofer et al. With respect to claims 1 and 13, Meyerhofer et al. disclose a mount for a shower or spray head having all the claimed features including a shower or spray head H having a first link (constituted by first tube B) with a fluid passage for receiving water and delivering water to the shower or spray head H, and the first link B being connected to a second link (constituted by second tube C) at a pivot joint, the first B and second C links each being provided with a pivot joint connection portion 60, 62, with one of the pivot joint connection portions 60 having an end wall (constituted by the wall adjacent head 84 of bolt 78) and a cup (constituted by cavity 70) extending from the end wall, and the other pivot connection portion 62 being a hollow cylindrical member to be received adjacent the cup (note Fig. 4), with a threaded member (constituted by bolt 78) being fixed to the end wall (note Fig. 4) and extending beyond the cup 70 such that the hollow cylindrical portion can be brought adjacent to the cup 70 with a nut 84 then secured onto the threaded member 78 on an opposed side of the hollow cylindrical portion

from the cup 70 to secure the first B and second C links. With respect to claim 2, Meyerhofer et al. also disclose that the first link B is provided with the end wall, cup 70 and threaded member 78 (note Fig. 4). With regard to claim 4, Meyerhofer et al. further disclose a seal 64 that is placed between the cup 70 and the hollow cylindrical portion of the other pivot connection portion 62, and another seal 86 that is placed between the hollow cylindrical portion and the nut 84. With regard to claims 6 and 14, Meyerhofer et al. additionally disclose that the cup 70 has a cylindrically extending boss and a ledge (note Fig. 4), and the hollow cylindrical member has a cylindrically extending boss and a ledge (note Fig. 4) with the cylindrically extending bosses of the cup 70 and the hollow cylindrical member interfitting to define closely fit and mutually contacting support surfaces. With respect to claims 7 and 15, Meyerhofer et al. also disclose that the boss of the cup 70 has an outer peripheral surface which supports an inner peripheral surface of the boss of the hollow cylindrical member.

### *Claim Rejections - 35 USC § 103*

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meyerhofer et al. in view of Price. Although Meyerhofer et al. fail to disclose that the nut 84 is a wing nut, attention is directed to Price who discloses another spray or shower head 8 which has a pivot bolt 7 provided with a wing nut type of head in order to adjustably hold the link 3 in various positions. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to substitute for the head 84 of Meyerhofer et al., the wing nut as, for example, taught by Price wherein so doing would amount to mere substitution of one bolt head mechanism for another that would work equally well in the Meyerhofer et al. device especially since a wing nut

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is easier to use in making adjustments due to the fact that no additional tools, such as a screw driver, are required.

23. Claims 5 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyerhofer et al. in view of Wuesthoff. Meyerhofer et al. also disclose that the second link C is pivotally connected to a third link (constituted by tubular member 22), with a second pivot joint in the form of a ball and socket connection or assembly G being provided between the second C and third 22 links. Although Meyerhofer et al. fail to disclose that the third link 22 is connected with a threaded type of pivot connection, attention is directed to Wuesthoff who discloses another mount for a shower head 17 which is pivotally connected to its link 10 through a threaded member or bolt 23. It would have been obvious to one of ordinary skill in the shower head art, at the time the invention was made, to substitute for the ball and socket pivot connection of Meyerhofer et al., the threaded type of pivot connection as, for example, taught by Wuesthoff wherein so doing would amount to mere substitution of one type of pivot connection for another that would work equally well in the Meyerhofer et al. device. With regard to claim 9, Meyerhofer et al. further disclose that the cup 70 has a cylindrically extending boss and a ledge (note Fig. 4), and the hollow cylindrical member has a cylindrically extending boss and a ledge (note Fig. 4) with the cylindrically extending bosses of the cup 70 and the hollow cylindrical member interfitting to define closely fit and mutually contacting support surfaces. With respect to claim 10, Meyerhofer et al. also disclose that the first link B is provided with the end wall, cup 70 and threaded member 78 (note Fig. 4). With respect to claim 11, Meyerhofer et al. additionally disclose that the boss of the cup 70 has an outer peripheral surface which supports an inner peripheral surface of the boss of the hollow cylindrical member.

***Allowable Subject Matter***

24. Claims 8, 12 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.



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*Conclusion*

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. In mid to late November, 2004, the examiner's office will move to the new complex in Alexandria, Virginia. Upon moving to the new complex, the examiner's new telephone number will be 571-272-4894.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

October 6, 2004



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